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115 North Orange Drive
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June 12, 2024

VIA ECF

Honorable Judge Katherine Polk Failla
United States Courthouse
40 Foley Square
New York, NY 10007

MEMO ENDORSED

Re: *Helen Swartz v. 44 Lexington Associates, LLC*
Case No.: 1:24-cv-452 (KPF)

Dear Judge Failla:

I write to the Court in response to Plaintiff's counsel's letter requesting an informal conference with the Court for a pre-motion discovery conference to correct the record slightly. This is an ADA action by serial litigant Helen Swartz, who has sued 168 hotels in New York, including 13 in the Southern District alone since 2023. In each case, she alleges an intent to return to every single hotel. Although the claims are moot, it is universally accepted that the parties must meet and confer regarding discovery before bringing such issues to the Court.

Counsel for plaintiff leaves the Court with the impression that Defendant has refused to confer to at least narrow the issues in dispute. However, that is not the case. On May 28, 2024, at 12:36 p.m., Mr. Rotbart granted an extension of one week to respond to the discovery from Plaintiff. On June 4, 2024, Mr. Rotbart stated in an email that "Please advise if we going to be able to resolve this case by way of settlement, or should I proceed with filing a motion to compel?" On June 6, Mr. Rotbart again contacted the undersigned, but I was out of the office. On June 10, I emailed Mr. Rotbart a 1:58 p.m. and told him that I was in court when he called but asked when was he available for a call. A copy of this email is attached hereto as Exhibit 1. He responded, "anytime." I returned Mr. Rotbart's call at 5 p.m. on June 10 and was told that he had left for the day. I left a message to call me at his convenience to discuss the responses to discovery. On June 10 at 5:08 p.m. I emailed Mr. Rotbart, saying that I returned his phone call and that "I will be in most of the day tomorrow so let's circle back then." A copy of this June 10 email is attached hereto as Exhibit 2. I did not hear back from Mr. Rotbart on June 10, June 11

or this morning. Instead, I received the ECF notice of Plaintiff's filing of a letter requesting a pre-motion discovery hearing. I believe that this letter is premature in that despite good faith efforts by both parties, we have not yet conferred on the discovery, which may eliminate or at least substantially narrow any disputes for the Court to address. Accordingly, Defendant believes that such a pre-motion conference is premature and the request should be denied without prejudice to renewal if necessary after the parties have conferred.

We thank the Court for its consideration of this matter.

Respectfully submitted,

/s/ Philip H. Stillman

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The Court is in receipt of Plaintiff's request for a pre-motion discovery conference (Dkt. #16) as well as Defendant's above response (Dkt. #17).

Plaintiff's request for a pre-motion discovery conference is hereby DENIED. The parties are hereby ORDERED to meet and confer regarding their discovery dispute on or before June 21, 2024. The Court expects that the parties will work diligently and in good faith to resolve all such disputes amongst themselves before bringing them to the Court's attention.

The Clerk of Court is directed to terminate the pending motions at docket entries 16 and 17.

Dated: June 13, 2024
New York, New York

SO ORDERED.



HON. KATHERINE POLK FAILLA
UNITED STATES DISTRICT JUDGE